

ESTTA Tracking number: **ESTTA499078**

Filing date: **10/09/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91202219
Party	Plaintiff Eat Right Foods Ltd.
Correspondence Address	JOSEPH V MAUCH SHARTISIS FRIESE LLP ONE MARITIME PLAZA, 18TH FLOOR SAN FRANCISCO, CA 94111 UNITED STATES jmauch@sflaw.com, skatz@sflaw.com, jmartin@sflaw.com, calendar@sflaw.com
Submission	Testimony For Plaintiff
Filer's Name	Joseph V. Mauch
Filer's e-mail	jmauch@sflaw.com, jmartin@sflaw.com, calendar@sflaw.com
Signature	/s/ Joseph V. Mauch
Date	10/09/2012
Attachments	Corrected Transcript R. Douglas-Clifford with Exhibits_Part4.pdf ( 18 pages ) (4780368 bytes )

# eatright

MORE BENEFITS IN EVERY BITE PRODUCTS

Gluten, Wheat Free No Added Sugar Dairy Free Low Yeast Egg Free Nut Free Soy Free Low Fat SlowDried™

## PRODUCT RANGE

Eat Right range of **gluten free, wheat free, dairy free, egg free, nut free, soy free, yeast free, no added sugar** and **low fat** (although not necessarily all at the same time) cakes, cookies and crackers for those who choose a natural healthy diet, for people with food allergies, food intolerance, coeliacs disease, diabetes, candida, lactose intolerance, vegetarian / vegan diet, high fibre diet etc.

And because we believe it is critically important to eliminate chemicals and pesticides from our products, we also use certified organic ingredients whenever possible.

As well as our organic certification, we have an internationally approved food safety programme (HACCP certification) which enables us to guarantee the safety of the products we produce for you.



Type	Product	Egg Free	Gluten, Wheat Free	Dairy Free	No Added Sugar	High/ contains fibre	Good Source of Protein	Nut Free	Soy Free	Low Fat	Incl. Organic Ingredients	Cert Organic
Cakes	Kings Fruit		✓	✓				✓		✓	✓	
Cookies	Gingernuts	✓	✓					✓			✓	
	Ginger cookie	✓	✓	✓		✓		✓	✓		✓	✓
	Yogi Cookie	✓	✓					✓			✓	
	Rice & Spice	✓	✓	✓				✓		✓	✓	
	Date & Apple Cookie	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓
	Choc-Holics Cookie	✓	✓	✓	65% less	✓		✓			✓	
	Apricot Cookies	✓	✓					✓	✓		✓	
	Oat & Sultana	✓	W/F		✓	✓		✓	✓		✓	
	Moritz Cookie							✓			✓	
	Giant Afghans	✓						✓			✓	
	Nut Corners										✓	
Raw Food	Energy Balls	✓	W/F	✓	✓	✓			✓	✓	✓	
Crackers	Super-Seeded	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	Bach Bread	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

**Online Shop** >> Please [visit our Online Shop](#) to purchase your products.

### In customers own words...

"I ordered some products a while back, just for a trail, and was most, most impressed. Thank you for the great quality products, great service, so prompt home delivery, easy internet order. Wonderful. Happy Customer" - **Jenni Petersen**

"Thank you again for having the best allergy free snacks that I have experienced in a long time. Until next time." - **Cynthia Ti Hon, Marine, USA**

"I have just discovered your wonderful products. I particularly like the nut corners!" - **Molly Reid, Christchurch**

Eat Right Foods Ltd · P.O. Box 1525 · Nelson, New Zealand · Phone: +64 (3) 546 4501 · Fax: +64 (3) 547 4501



Free delivery within Nelson City area. For other destinations see postage information.



**Giant Afghans / Mini Afghans**  
**Egg Free, Nut Free**

A biscuit for all occasions: morning tea, your lunch box, afternoon tea or just "on the go". The delicious combination of crunchy wheat flakes, fair-trade certified organic cocoa and 70% cocoa mass chocolate chunks.

US\$ 1.37 to 5.33

[Buy](#)



**Nut Corner**

You can get addicted to this triangle: a crisp almond flavoured short pastry topped with a blend of spray free walnuts and certified organic spices, folded in a meringue and coated with dark chocolate.

US\$ 1.94 to 5.67

[Buy](#)



**Gingernuts**

*Gluten, Wheat, Nut & Egg free*

What else can we say, they are divine. US\$ 3.06 to 5.33

[Buy](#)



**Moritz Cookie**

*Nut free*

Taking its name from the famous Swiss mountains this biscuit has mountainous amounts of chocolate and a hint of cinnamon to give it some extra....

US\$ 1.37 to 5.33

[Buy](#)



**Yogi Cookie**

*Gluten, Wheat, Nut & Egg free*

This one takes a lot of beating - delightful bite sized cookie with apricots and pineapple juice and hand dipped in yoghurt. There are six in the packet so they are great for sharing or, because they are so morish, you might even want to eat the lot yourself.

US\$ 3.06 to 5.33

[Buy](#)



**Rice & Spice Cookie**

Gluten, wheat, dairy, soy, egg, nut and peanut free

US\$ 1.37

[Buy](#)



**Choc-Holics Cookie**

65% less sugar than an average cookie.

Gluten, Wheat, Dairy, Egg & Nut Free.

Just as the name suggests, this cookie is for all you chocolate lovers out there.

As well as it delicious and rich chocolate taste, it is free from many food allergens - making it a divine combination and must have treat.

US\$ 1.62 to 5.35

[Buy](#)



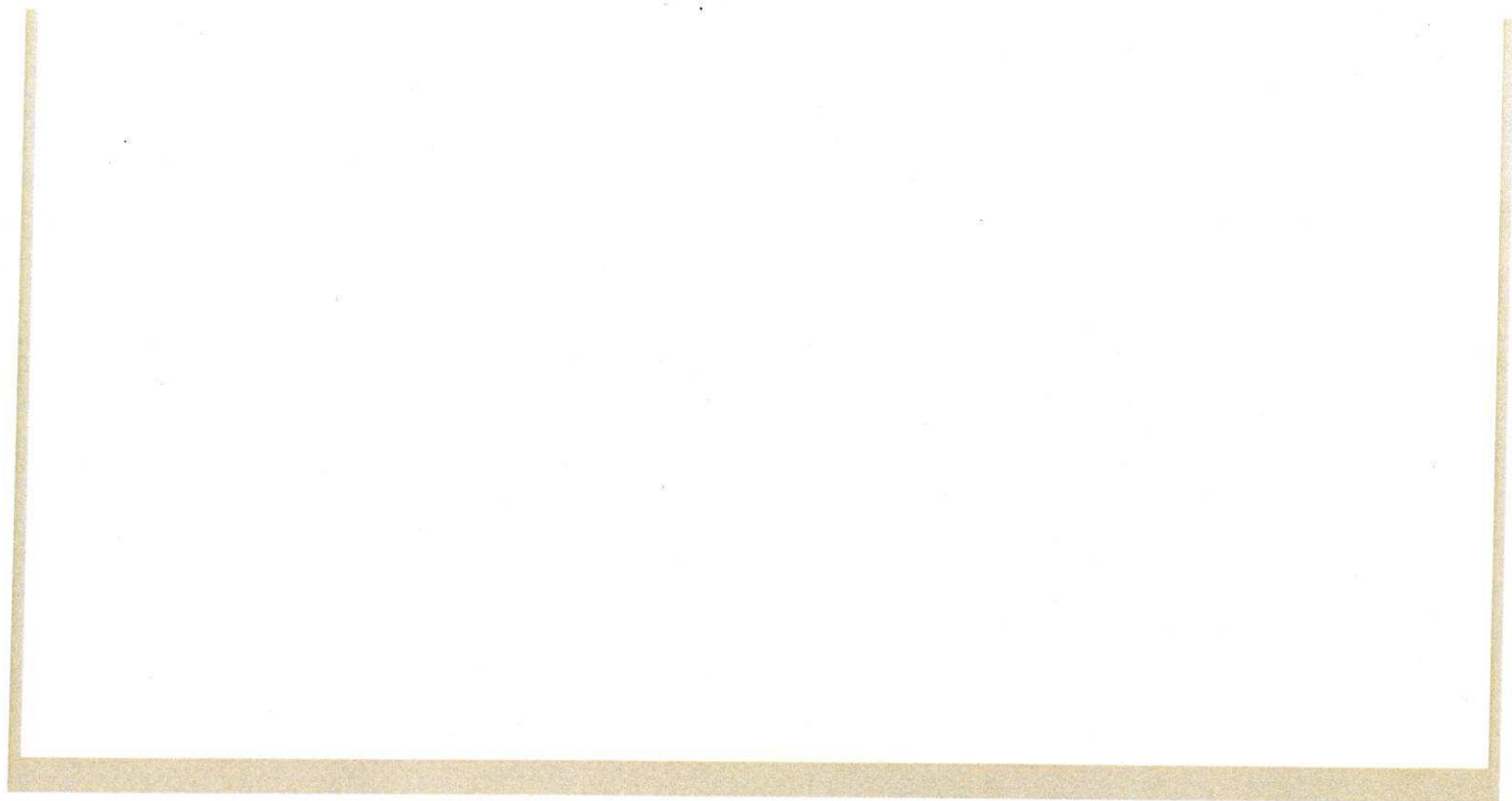
**Ginger Cookie**

Gluten & Wheat free; Dairy free, Soy free, Egg free; Nut free, High in Fibre, fully certified organic GMO/GE free. If you love our Gingernuts, then you are going to love our brand new Ginger Cookies. As well as the divine taste.

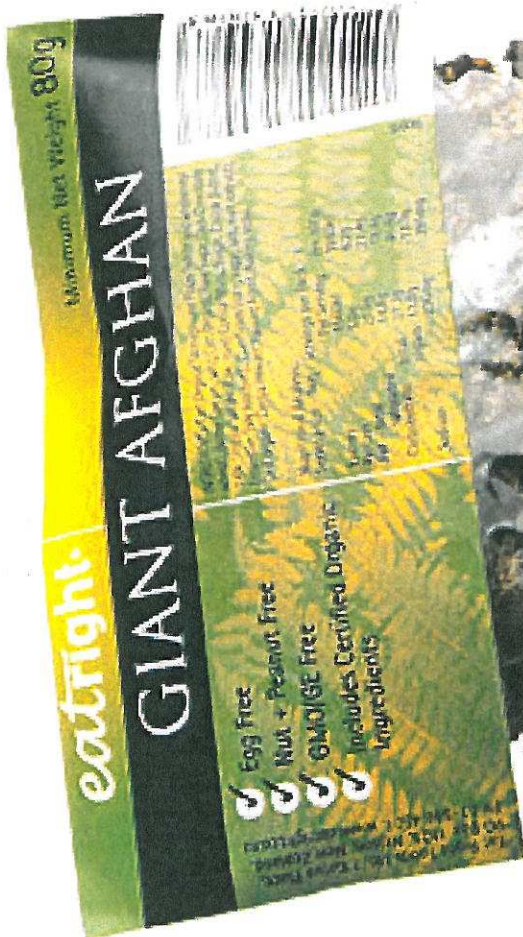
US\$ 1.37 to 5.33

[Buy](#)









Clifford  
EXHIBIT NO. 7  
9.12.12  
Andrea Ignacio, CSR 9830





Clifford  
EXHIBIT NO. 8  
9.12.12  
Andrea Ignacio, CSR 9830

Free delivery within Nelson City area. For other destinations see postage information.



**Bach Bread Cracker**

Gluten and wheat free, dairy free, soy free, egg free, good source of protein, contains fibre, nut and peanut free, certified organic US\$ 5.43

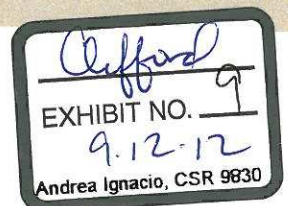
[Buy !\[\]\(6a9b39b98eb945faa14c645ec99e4eaa\_img.jpg\)](#)



**Super-Seeded Cracker**

Gluten and wheat free, Dairy free, soy free, egg free, no added oil or salt, good source of protein, source of omega 3, contains fibre and is very low in sodium, nut and peanut free, certified organic US\$ 5.43

[Buy !\[\]\(f1c5da15572e3e09d343161be98f508d\_img.jpg\)](#)







Clifford  
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9.12.12  
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eatright

Select Currency

0 items in Cart - US\$0.00

 Checkout / Basket

[Cookies](#) [Crackers](#) [Cakes](#) [Christmas Specials](#) [Gift Packs](#) [100% Organic](#)

Free delivery within Nelson City area. For other destinations see [postage](#) information.



**Kings Fruit Cake**

*Dairy Free - Wheat Free - Gluten Free - Nut Free; Blood type O and A*

Take a mix of sultanas, mixed peel, add a pinch of cloves, a little bit of cardamon, lemon juice, pineapple juice and mix it all with stone ground brown rice flour for an unforgettable treat! [US\\$ 5.33](#)

[Buy](#) 





Clifford  
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9.12.12  
Andrea Ignacio, CSR 9830



Free delivery within Nelson City area. For other destinations see postage information.



### Christmas Gluten Free Gift Pack

Christmas Gluten Free Gift Pack - "Fresh Food" cookbook with lots of gluten & dairy free recipes, Christmas Mince Pies & Christmas Cakes US\$ 47.07

[Buy](#)



### Christmas Mince Pies

Christmas Mince Pies - Gluten & wheat free. Soy free, nut free.  
6 pies per 540g pack US\$ 8.92

[Buy](#)



### Christmas Cakes

Christmas Cakes - gluten free, dairy free, nut free, low fat, and includes lots of certified organic ingredients US\$ 5.67

[Buy](#)



Free delivery within Nelson City area. For other destinations see postage information.



**Rice & Spice Cookie**

*Wheat & Gluten Free, Dairy Free, Egg Free, No Added Fat, G.M.O. Free; Blood type O and A*

Every Rice & Spice contains a little bit of our best kept secret: we mix a spoon of cinnamon, a punch cloves, a hint of cardamon and just a little bit more of ginger (of course all certified organic). The spices come to life combined with certified organic honey, certified organic sunflower seeds and certified organic brown rice flour and create an unforgettable treat!

US\$ 1.78

Buy



**Organic Dried Apples**

Low & slow dried organic apples. Preservative and sulphite free. US\$ 1.37 to 5.33

Buy



**Super-Seeded Cracker**

Gluten and wheat free, Dairy free, soy free, egg free, no added oil or salt, good source of protein, source of omega 3, contains fibre and is very low in sodium, nut and peanut free, certified organic US\$ 5.43

Buy



**Bach Bread Cracker**

Gluten and wheat free, dairy free, soy free, egg free, good source of protein, contains fibre, nut and peanut free, certified organic US\$ 5.43

Buy



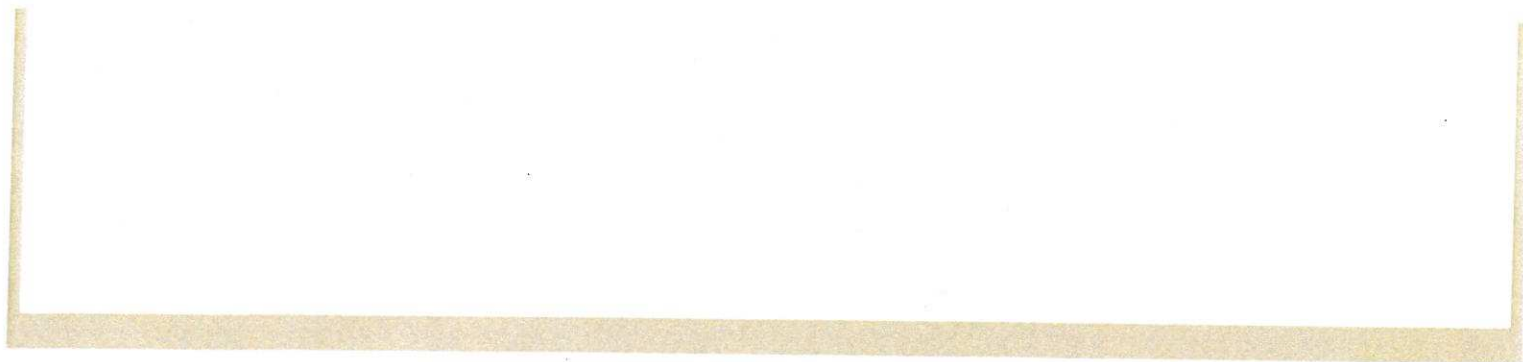
**Ginger Cookie**

Gluten & Wheat free; Dairy free, Soy free, Egg free; Nut free, High in Fibre, fully certified organic GMO/GE free. If you love our Gingernuts, then you are going to love our brand new Ginger Cookies. As well as the divine taste. US\$ 1.37 to 5.33

Buy









*Clifford*  
EXHIBIT NO. 15  
9.12.12  
Andrea Ignacio, CSR 9830



## Trademark Snap Shot Prosecution History for Informal Notice

(Table presents the data on Prosecution History for Informal Notice)

### OVERVIEW

SERIAL NUMBER	77868068	FILING DATE	11/09/2009
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	KON, ELISSA GARBER	L.O. ASSIGNED	106

### PUB INFORMATION

RUN DATE	04/02/2011
PUB DATE	04/26/2011
STATUS	681-PUBLICATION/ISSUE REVIEW COMPLETE
STATUS DATE	03/23/2011
LITERAL MARK ELEMENT	EAT RIGHT AMERICA

DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPUB 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

### FILING BASIS

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	NO	1 (a)	NO	1 (a)	NO
1 (b)	YES	1 (b)	YES	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

### MARK DATA

STANDARD CHARACTER MARK	YES
LITERAL MARK ELEMENT	EAT RIGHT AMERICA



MARK DRAWING CODE	4-STANDARD CHARACTER MARK
COLOR DRAWING FLAG	NO

### CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	Nutritional Excellence, LLC
ADDRESS	76 Nubel Lane New Canaan, CT 06840
ENTITY	16-LTD LIAB CO
CITIZENSHIP	Connecticut

### GOODS AND SERVICES

INTERNATIONAL CLASS	005
DESCRIPTION TEXT	NUTRITIONAL SUPPLEMENTS, DIETARY SUPPLEMENTS, HERBAL SUPPLEMENTS, HOMEOPATHIC SUPPLEMENTS, MINERAL SUPPLEMENTS, MULTI-VITAMINS, AND NUTRACEUTICALS FOR USE AS A DIETARY SUPPLEMENT
INTERNATIONAL CLASS	016
DESCRIPTION TEXT	SERIES OF BOOKS IN THE FIELDS OF HEALTH, NUTRITION AND LIFESTYLE WELLNESS
INTERNATIONAL CLASS	025
DESCRIPTION TEXT	CLOTHING, NAMELY, MEN'S AND WOMEN'S APPAREL AND SPORTSWEAR, NAMELY, CAPS, HATS, VISORS, BANDANAS, SCARVES, HEADBANDS, SHIRTS, BLOUSES, TANK TOPS, GOLF SHIRTS, JERSEYS, KNIT SHIRTS, SWEAT SHIRTS, HOODED SWEAT SHIRTS, T-SHIRTS, TANK TOPS, PULLOVERS, HOODED PULLOVERS, WOVEN SHIRTS, COATS, JACKETS, WIND RESISTANT JACKETS, PANTS, SLACKS, SWEAT PANTS, YOGA PANTS, JEANS, SHORTS, DRESSES, SKIRTS, SWEATERS, SPORT COATS, SUITS, AND SPORT SUITS
INTERNATIONAL CLASS	029
DESCRIPTION TEXT	FROZEN, PREPARED AND PACKAGED VEGETABLE-BASED ENTREES; FROZEN VEGETABLES; AND SOUPS
INTERNATIONAL CLASS	030
DESCRIPTION TEXT	SALAD DRESSINGS

### GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	005	FIRST USE DATE	NONE	FIRST USE IN COMMERCE DATE	NONE	CLASS STATUS	6-ACTIVE
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INTERNATIONAL CLASS	016	FIRST USE DATE	NONE	FIRST USE IN COMMERCE DATE	NONE	CLASS STATUS	6-ACTIVE
INTERNATIONAL CLASS	025	FIRST USE DATE	NONE	FIRST USE IN COMMERCE DATE	NONE	CLASS STATUS	6-ACTIVE
INTERNATIONAL CLASS	029	FIRST USE DATE	NONE	FIRST USE IN COMMERCE DATE	NONE	CLASS STATUS	6-ACTIVE
INTERNATIONAL CLASS	030	FIRST USE DATE	NONE	FIRST USE IN COMMERCE DATE	NONE	CLASS STATUS	6-ACTIVE

#### MISCELLANEOUS INFORMATION/STATEMENTS

CHANGE IN REGISTRATION	NO
OWNER OF US REG NOS	3662109 3898699

#### PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
04/01/2011	UNTD	O	REQUEST TO DIVIDE UNTIMELY, REFUSED, OR WITHDRAWN	026
03/30/2011	AITU	A	CASE ASSIGNED TO INTENT TO USE PARALEGAL	025
03/24/2011	ERTD	I	TEAS REQUEST TO DIVIDE RECEIVED	024
03/23/2011	PREV	O	LAW OFFICE PUBLICATION REVIEW COMPLETED	023
03/23/2011	ALIE	A	ASSIGNED TO LIE	022
03/07/2011	CNSA	P	APPROVED FOR PUB - PRINCIPAL REGISTER	021
03/07/2011	XAEC	I	EXAMINER'S AMENDMENT ENTERED	020
03/07/2011	GNEN	O	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	019
03/07/2011	GNEA	O	EXAMINERS AMENDMENT E-MAILED	018
03/07/2011	CNEA	R	EXAMINERS AMENDMENT -WRITTEN	017
03/01/2011	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED	016
02/28/2011	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	015
02/28/2011	TROA	I	TEAS RESPONSE TO OFFICE ACTION RECEIVED	014
08/31/2010	GNRN	O	NOTIFICATION OF NON-FINAL ACTION E-MAILED	013
08/31/2010	GNRT	O	NON-FINAL ACTION E-MAILED	012
08/31/2010	CNRT	R	NON-FINAL ACTION WRITTEN	011

08/24/2010	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED	010
08/23/2010	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	009
08/23/2010	TROA	I	TEAS RESPONSE TO OFFICE ACTION RECEIVED	008
08/23/2010	TCCA	I	TEAS CHANGE OF CORRESPONDENCE RECEIVED	007
02/22/2010	GNRN	O	NOTIFICATION OF NON-FINAL ACTION E-MAILED	006
02/22/2010	GNRT	F	NON-FINAL ACTION E-MAILED	005
02/22/2010	CNRT	R	NON-FINAL ACTION WRITTEN	004
02/16/2010	DOCK	D	ASSIGNED TO EXAMINER	003
11/13/2009	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	002
11/12/2009	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

### CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	Tristram R. Fall, III
CORRESPONDENCE ADDRESS	TRISTRAM R. FALL, III FOX ROTHSCHILD LLP P.O. BOX 5231 PRINCETON, NJ 08543-5231
DOMESTIC REPRESENTATIVE	NONE



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